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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 415

LOUIS HARRY PARKER,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA.

WILLIAM H. COLONA, JR.,
1756 Laskin Road
Virginia Beach, Virginia 23451,
Counsel for the Petitioner.

GERALD RUBINGER,
JOHN N. PARKER,
1756 Laskin Road
Virginia Beach, Virginia 23451,
Of Counsel.

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OPINIONS BELOW

The Supreme Court of Appeals wrote no opinion in affirming the judgment of conviction by denying a writ of error. The trial judge's oral opinion denying the motion to set the verdict of the jury aside as being contrary to the law and the evidence is not reported.

JURISDICTION

1. The Supreme Court of Appeals denied review on March 11, 1969. On May 20, 1969, this Honorable Court entered an order extending time to file petition for writ of certiorari up to and including August 4, 1969.

2. The federal question was raised as shown below.

3. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3).

QUESTION PRESENTED

Whether a criminal defendant who was engaged in a legitimate business, is guaranteed a right of privacy in his place of business and is entitled to be secure from police harassment and unlawful search and seizure, pursuant to the Fourth Amendment and the due process clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISION INVOLVED

1. The Fourth and Fourteenth Amendment to the Constitution of the United States are sufficiently familiar as not to require quotation.

STATEMENT

Petitioner, a licensed businessman in the City of Newport News, Virginia, stands convicted of assault and battery upon a City police officer and is in consequence under a sentence of ninety days in jail and a Five Hundred Dollar ($500.00) fine.

The details of the evidence, while in conflict as to whether or not the petitioner was purportedly under arrest or not when he was struck repeatedly by the police officer swinging his blackjack are not in dispute as to the fact that the officer was asked to leave the premises, when he would not give the petitioner a reason for his being there. (Tr. 81, 82).

The facts out of which the single question here presented arises are as follows:

The petitioner was the owner and operator of a combination billiard parlor and food and beer establishment and had been in business in Newport News for approximately five years without any problems or violations. On November 4, 1967, Officer McCoy, who was on duty with the Newport News Police Department at the time walked into petitioner's place of business for what he termed was a "routine check". McCoy asked petitioner about the operation of the pool tables since he was interested in whether they were coin operated. After answering the police officer, petitioner asked McCoy if there was anything further whereupon McCoy said he was checking. Officer McCoy was then asked several times by petitioner to leave and did not do so. Officer McCoy then testified that petitioner started shouting and screaming for him to leave, but never threatened him. McCoy then stated that he placed him under arrest and that the petitioner grabbed him whereupon McCoy drew his blackjack and struck petitioner several times. After being struck, petitioner grabbed a pool cue and struck McCoy one time over the head.

The case was heard before a judge and jury and the original indictment of maiming was reduced to assault and battery.

Following petitioner's conviction of assault and battery, counsel moved to set the verdict aside as being contrary to the law and the evidence. Said motion was summarily overruled by the trial judge.

Petitioner then made application to the Supreme Court of Appeals, Virginia's highest Court, for a writ of error which was denied: "***the Court being of opinion that there is no reversible error in the judgment

complained of, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said hustings court."

HOW THE FEDERAL QUESTION WAS RAISED

1. The contention that petitioner's constitutional rights were violated was raised in his assignments of error and repeated in his petition for writ of error, seeking review of his conviction by the Commonwealth's highest court.

REASONS FOR GRANTING THE WRIT

The mere failure to interpose a defense based on constitutional rights, prior to the announcement of a decision, cannot prevent a litigant from invoking such defense later on appellate review. *Curtis Publishing Co.* v. *Butts,* 388 U.S. 130.

Does the State law give a police officer the absolute right to loiter in a man's place of business seeking, without any prior complaint, to stay there long enough so that something might come into view? We think not. We submit that once the police officer was asked to leave that he became no more than a mere trespasser. If the officer was looking for something specific he should have responded to the owner's inquiry. If he was merely on a "fishing expedition" then he should have left when asked by the petitioner. Should a police officer once having entered the premises under his color of authority be allowed to remain if he refuses to state the purpose of his intrusion? The protection afforded by the Fourth Amendment against administrative searches extends to business premises. *Knoll Associates, Inc.* v. *F.T.C.,* 397 F. 2d 530. A citizen has standing to object to unreasonable search of his office as well as his home.

Mancusi v. *De Forte*, 88 S Ct. 2120. Surely a businessman should have the right to feel secure within his own establishment. Supreme Court decisions have time and again underscored essential purpose of the Fourth Amendment to shield a citizen from unwarranted intrusions into his privacy. *Jones* v. *U.S.*, 357 U.S. 493.

Can there be any doubt that a citizen who is doing nothing more than taking care of his business establishment is entitled to the protection of the due process clause of the Fourteenth Amendment? It would certainly appear that petitioner's right of privacy is interwoven with the protection afforded by the due process clause. *Frank* v. *Maryland*, 359 U.S. 360.

The conversation reached such a fever-pitch that it resulted in physical abuse upon the petitioner. We submit that Officer McCoy's arbitrary intrusion resulted in a breach of the security of the petitioner's privacy. *Stefanelli* v. *Minard*, 342 U.S. 117.

Under the facts that we have before us, we submit that the State cannot rely upon its color of authority to intrude upon the solitude of petitioner in his licensed place of business so as to cause the petitioner to fear that his very livelihood was at stake. Not only was petitioner deprived of his right of privacy, but his business was searched without apparent probable cause, and ultimately petitioner was forced to defend himself upon his own premises.

CONCLUSION

For the foregoing reasons, we respectfully submit this petition for a writ of certiorari should be granted.

WILLIAM H. COLONA, JR.,
1756 Laskin Road
Virginia Beach, Virginia 23451,
Counsel for the Petitioner.

JOHN N. PARKER
GERALD RUBINGER
1756 Laskin Road
Virginia Beach, Virginia 23451
Of Counsel

July, 1969.